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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/602,923	06/23/2000	Bernard Duroux	BRI-00039	1036

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EXAMINER
SHAFER, RICKY D

ART UNIT	PAPER NUMBER
2872	

DATE MAILED: 03/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/602,923	DUROUX ET AL
Examiner	**Group Art Unit**
R.D. SHAFER	2872

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 1/16/02.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle,* 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-15 is/are pending in the application.

Of the above claim(s) 8-15 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-7 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The drawing(s) filed on 6/23/00 is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____.

Attachment(s)

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

1. Applicant's election of invention I (claims 2-7) in Paper No. 4 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

In regards to applicant's statement that there would be no serious burden to examine the non-elected invention along with the elected invention. This is not found persuasive because the restriction set forth in Paper No. 3 is based on the claimed structural differences between the various inventions and not on their similarities. Continued search and examination of the claim(s) to a non-elected invention including claims having substantially different structural limitation is a prima facie showing of burden. Applicant may overcome the requirement for restriction by presenting an allowable linking claim or by providing a clear admission on the record that the claim(s) drawn to a given non-elected invention/species is not patentably distinct from the elected invention/species.

2. Claims 8-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected invention. Election was made **without** traverse in Paper No. 4.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Enomoto et al ('693).

Enomoto et al discloses a rearview mirror assembly comprising a base (16), a housing (14), a reflective member (12) and an electric motor (30), note Fig. 1, wherein said electric motor inherently includes a controller (a switch) in order to turn on or off the electric motor and what ever speed the motor operates at in order to position the housing from a folded position to an unfolded position or vice-versa serves as applicant's "first speed".

5. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Valentino ('167).

Valentino discloses a rearview mirror assembly comprising a base (128), a housing (124), a reflective member (126), an electric motor (122) and a controller (100,110) including measuring means (220) having a counter (90), note Figures 4, 6-9, 11 and 12, wherein what ever speed the motor operates at in order to position the housing from one position to another position or vice-versa serves as applicant's "first speed".

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enomoto et al ('693) in view of Tomiyoshi ('030).

Enomoto et al discloses all of the subject matter claimed, note the above explanation, except for explicitly stating applicant's particular swing speed of the mirror assembly.

Tomiyoshi teaches it is known to adjust the swing speed of a mirror assembly in the same field of endeavor for the purpose of regulating the speed of the mirror assembly.

It would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to adjust and/or tailor the swing speed of the mirror assembly of Enomoto to meet user's specifications. Since it has been held that discovering optimum or workable ranges involves only routing skill in the art. Note In re Aller 105 US PQ 233; In re Boesch, 617 F. 2d 272, 205 US.PQ. 215 (CCPA 1980) and In re Reese, 129 U.S.PQ. 402.

8. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valentino ('167) in view of Tomiyoshi ('030).

Valentino discloses all of the subject matter claimed, note the above explanation, except for explicitly stating applicant's particular swing speed of the mirror assembly.

Tomiyoshi teaches it is known to adjust the swing speed of a mirror assembly in the same field of endeavor for the purpose of regulating the speed of the mirror assembly.

It would have been obvious and/or within the level of one of ordinary skill in the art at the time the invention was made to adjust and/or tailor the swing speed of the mirror assembly of Valentino to meet user's specifications. Since it has been held that discovering optimum or workable ranges involves only routing skill in the art. Note In re Aller 105 US PQ 233; In re Boesch, 617 F. 2d 272, 205 US.PQ. 215 (CCPA 1980) and In re Reese, 129 U.S.PQ. 402.

9. The drawings are objected to because element (30), disclosed on page 2 of the specification, has not been properly labeled. Correction is required.

10 Any inquiry concerning this communication should be directed to R.D. Shafer at telephone number (703) 308-4813.

RDS

March 20, 2002

RICHARD D. SHAFER
PRIMARY EXAMINER
ART UNIT 2872